UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/WG.18/6
18 September 2002

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Open-ended working group on
the right to development
Geneva, 7-18 October 2002

Fifth report of the independent expert on the right to development, Mr. Arjun Sengupta, submitted in accordance with Commission resolution 2002/69

Frameworks for development cooperation and the right to development

GE.02-15239 (E) 200902

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Executive summary

The mandate of the independent expert on the right to development was established by Commission on Human Rights resolution 1998/72, together with the open-ended working group on the right to development. He is mandated to present to the working group at each of its sessions a study on the current state of progress in the implementation of the right to development as a basis for focused discussion. In resolution 2002/69, the Commission on Human Rights particularly requested the independent expert "to conduct an appraisal of country-specific studies relevant to the proposed operational model of his development compact, taking into account different national, regional and international frameworks including the New Partnership for Africa's Development". This report has been prepared in pursuance of that resolution.

In addition, this report provides a brief overview of the principles of international frameworks of development cooperation, compares them with the right to development (RTD) framework as articulated by the independent expert, and shows how some of these processes can be extended and modified to incorporate the basic principles of the RTD approach, and its operationalization through the proposed development compact (RTD-DC). It also discusses financing of rights-based development.

The independent expert offers an analysis of the right to development approach in different frameworks in terms of its principles, notably participation, accountability, transparency, equity and respect for the principle of non-discrimination, and concludes that the RTD-DC model can accommodate all the existing mechanisms and frameworks for development cooperation. He stresses that two fundamental requirements for the integration of all development efforts are that the realization of human rights must be a central aim, and there must be an independent rights-based monitoring mechanism.

Introduction

1. The fifth report of the independent expert on the right to development[1] submitted for the consideration of the open-ended working group on the right to development elaborates on the discussions of development cooperation policies contained in his fourth report in which the independent expert spelt out the details of his proposed operational model of development compact for realizing the right to development. The Commission on Human Rights, in its resolution 2002/69 (para. 21), requested the independent expert "to conduct an appraisal of country-specific studies relevant to the proposed operational model of his development compact, taking into account different national, regional and international frameworks, including the New Partnership for Africa's Development". This report has been prepared in pursuance of that resolution.

2. In his fourth report, the independent expert, in developing his operational model of the development compact, referred to the international frameworks of development cooperation, such as the Poverty Reduction Strategy Papers (PRSP), the Comprehensive Development Frameworks (CDF), the Common Country Assessment (CCA) and the United Nations Development Assistance Framework (UNDAF). This report provides a brief overview of the principles of each of these development frameworks along with their related goals, achievements and constraints and the modality of their operations. It seeks to compare PRSP, CCF and CCA/UNDAF with the right to development (RTD) framework articulated in the independent expert's RTD operational vehicle - the "development compact" (RTD-DC). In light of these discussions, it tries to show how the PRSP/CDF process can be extended and modified to incorporate the basic principles of the RTD approach.

3. The report focuses on the relatively new initiative of the African countries, the New Partnership for Africa's Development (NEPAD), which the Commission in resolution 2002/69 supported and appreciated "as a development framework and a practical example which could be explored for the promotion of a rights-based approach to development" (para. 20). Indeed, this initiative closely reflects the spirit and principles of the right to development and is conducive to the application of RTD-DC. The report will analyse NEPAD in the context of RTD-DC and suggest measures to locate it at the centre of the human rights approach to development.

4. The report begins with a brief review of the RTD approach and the development compact, followed by an analysis of the basic elements of NEPAD from the perspective of that approach. Finally, it discusses the shared principles of and the difference between PRSPs, CDF and CCA/UNDAF and the RTD-DC model and suggests how they can be accommodated within the RTD framework.

I. THE OPERATIONAL MODEL OF THE RIGHT TO DEVELOPMENT - DEVELOPMENT COMPACT

5. The independent expert in his earlier reports examined the content of the right to development in great detail.[2] He has defined the right to development as the particular process of development in which all human rights and fundamental freedoms can be fully realized. It is derived from the text of the Declaration on the Right to Development (1986), which defines

development as a comprehensive process of improving well-being and describes its characteristics. In that process all human rights and fundamental freedoms can be fully realized in their totality as an integrated whole, since all rights are interrelated and interdependent. It is a process in time, not a finite event. All the elements, whose improvement constitutes development, depend on each other, both at a point in time and over time, and are realized progressively. The outcomes of development, which are the improved realization of different rights, as well as the way in which they are realized constitute the process of development. The outcomes are realized progressively, with resource constraints on their realization gradually being relaxed through economic growth in a manner consistent with human rights norms.

6. The right to development is a composite right to a process of development; it is not just an "umbrella" right, or the sum of a set of rights. The integrity of these rights implies that if any one of them is violated, the whole composite right to development is also violated. The independent expert describes this in terms of a "vector" of human rights composed of various elements that represent the various economic, social and cultural rights as well as the civil and political rights. The realization of the right to development requires an improvement of this vector, such that there is improvement of some, or at least one, of those rights without violating any other.

7. The realization of all these interdependent rights depends on the availability of, as well as the access to the goods and services which correspond to the fulfilment of each of the rights. Both the availability and the access to these goods and services are constrained by a country's resources represented, for instance, by its gross domestic product (GDP). The availability of any one of the relevant goods or services cannot be increased indefinitely without decreasing the availability of another, if the country's resources do not increase. Similarly, access to the relevant goods and services would depend upon public policies, including public expenditure which cannot expand indefinitely without an increase in public revenue; this, in turn, would be related to an increase in the country's GDP. A process of development in which all rights are realized together would, therefore, include growth of GDP as an element that would relax the country's resource constraints.[3]

A. The importance of economic growth in the right to development

8. The significance of including rights-based economic growth with equity and justice (or g*, as described in note 3) as a constituent element of the right to development - i.e. as the right to a particular process of development - is not always fully appreciated. All other rights constituting elements of the vector whose improvement is regarded as development have been recognized as human rights in the various international treaties. As a constituent element of the process of development that is critical to the progressive realization of human rights, it is only logical and natural to include rights-based economic growth as an element of the RTD vector.

9. It is of course possible, by reallocation and redistribution of existing resources, to improve the realization of some of the rights, separately and individually, for a limited period and to a limited extent, without economic growth. Indeed, the lack of economic growth cannot be used as an excuse for not implementing the policies to realize those rights by making the maximum use of available resources. However, it must be recognized that all rights, including civil and political rights, involve using resources to expand the supply of the corresponding

goods and services and, possibly, public expenditure. Therefore, if all or most of these rights have to be realized fully and together and in a sustainable manner, steps have to be taken to relax the resource constraint by ensuring economic growth. A redistributive policy alone cannot succeed for long without reducing the availability, and therefore the realization, of other rights, thereby violating the composite right to development. Without bringing economic growth explicitly into the picture, the right to development would be confined to the possible realization of some of the rights only, and then also individually and separately.

10. For economic growth to be included as an element of the claims representing the right to development, it must satisfy the basic condition of facilitating the realization of all the other rights. All the social development indicators must improve, with increasing availability of the corresponding goods and services in accordance with the human rights norms. In other words, policies adopted to increase economic growth must be consistent with human rights standards so as not to negate the policies implemented to realize all the other rights. They must be equitable, non-discriminatory and participatory – generally the features of equity. If pursued with accountability and transparency, they would be in conformity with the principles of both equity and justice.

11. This characterization of economic growth, in the context of the realization of all human rights, follows from its instrumental role in the right to development. But rights-based economic growth with equity and justice also has a substantive role as a constituent element of the right to development, as it is of all other rights, which are desirable in themselves as standards of achievement of a society. This is precisely why developing countries have always championed the cause of the right to development. From the very beginning, the developing countries clamoured for an international order and social arrangement that would allow then to grow out of the quagmire of their underdevelopment, poverty and all-round deprivation to a higher level of income and living standards that would allow their people to live with dignity and them to be treated by other countries as equal partners and with fairness.

12. The understandable and legitimate urge of developing countries for economic growth has sometimes been misconstrued as supportive of only economic, social and cultural rights at the expense of civil and political rights. Similarly, the pressure of some countries to recognize only civil and political rights as legitimate human rights claims has been resented by most developing countries as a rejection of their demand for economic growth in an equitable international order. The formulation of the right to development presented by the independent expert, can help reconcile these competing concerns. Civil and political rights and economic, social and cultural rights can be seen as fully integrated within the demand for rights-based economic growth when they are all perceived as constituent elements of the right to development. None of these elements can be allowed to deteriorate, and the policies of the national and international duty-holders would aim at maximizing the realization of at least some, if not all, of these rights, depending upon the context and the prevailing conditions of a country, as well as the preferences of the people.[4]

B. Operational elements

13. The RTD framework is guided by principles drawn from both the normative framework of human rights and the human development approach. As the Human Development Report, 2000, which was subtitled "Human rights and human development", explained, the human rights approach focuses on claims that individuals have on the conduct of the State, duty-holders and other agents to secure their rights and freedoms while human development thinking focuses on the outcomes of various kinds of social arrangements. Many of the tools of this (human development) approach measure the outcomes of social arrangements in a way that is not sensitive to how these outcomes were brought about. In the human rights approach both the outcomes and the way they are realized are treated as rights, with specified obligations on States and the international community as duty-holders with accountability and subject to appropriate monitoring. States would have to adopt policies and implement rights; the members of the international community would have the obligation to cooperate with each other and with the concerned States to enable those policies to be implemented.

14. A salient feature of the RTD approach is its emphasis on an operational programme with specific policies of national actions and international cooperation within an operational model for realizing human rights. There are four basic operational elements of RTD-DC:

(a) *A rights-based development programme* - A development approach and policy prescription that is rights based implies a process that is equitable, non-discriminatory, participatory, accountable and transparent. Equity (or diminishing disparities) is an overarching theme in the right to development, and equity with respect to growth of resources (including GDP, technology and institutions) is central to the RTD-DC approach. Non-discrimination and equality are twin principles. There should be no discrimination on the grounds of sex, race, language, political affiliation or socio-economic status in the design and implementation of policies and practices, nor discrimination between agents, stakeholders and beneficiaries. Participation requires that all decisions fully involve the beneficiaries, who must have complete access to the decision-making process and ownership of the development programme. Rights and obligations have to be supported by a system of accountability, requiring duty-holders such as States and intergovernmental organizations to be held responsible for respecting, protecting and fulfilling human rights. This involves establishing appropriate adjudicating and monitoring mechanisms through a formal, legal process or through an alternative (and legitimate) independent process. Transparency implies exposing openly all the interrelations and linkages between different actions and actors. It is an essential requirement for establishing accountability;

(b) *Poverty reduction and social indicator targets* - As elaborated in the fourth report, the design and implementation of a rights-based development programme require identifying appropriate indicators and benchmarks to monitor the status of realization of each of the rights, as well as a mechanism for evaluating the interaction among the indicators;

(c) *Development compacts* - A development compact is a mechanism for ensuring that all stakeholders recognize the "mutuality of obligations", so that the obligations of developing countries to carry out rights-based programmes are matched by reciprocal obligations of the international community to cooperate to enable the implementation of the programmes.

The purpose of development compacts is to assure the developing countries that if they fulfil their obligations, the programme for realizing the right to development will not be disrupted owing to lack of financing. The process of instituting a development compact involves several steps:

(i) Focusing on realizing a few rights, such as the Millennium Development Goals or poverty reduction, consistent with human rights norms;

(ii) Designing a national development programme and requesting a development compact;

(iii) Developing the programme in consultation with civil society, adopting legislation to incorporate it in domestic law and establishing a national human rights commission;

(iv) Specifying the obligations of both the national authorities and the international community;

(v) Establishing a focal organization for members of the international community in the implementing country;

(vi) Organizing a support group for the concerned developing country comprising stakeholders who, inter alia, would scrutinize and review development programmes, examine the obligations specified and decide on burden-sharing among the members of the international community in meeting their respective obligations under the compact;

(vii) Assessing and implementing appropriate measures at both the bilateral and multilateral levels (e.g. debt relief, trade, investment);

(viii) Setting up a financial facility called the Fund for Financing Development Compacts, with contributions in the form of "callable commitments" from all the members of the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD);

(ix) Determining the residual financing requirement of a particular development compact, after the implementation of all other measures of development cooperation and after taking into account the possible contributions of multilateral and bilateral donors with a special interest in the country; and

(x) Establishing a mechanism with the help of the support group to invoke the "callable commitments" of the different DAC members from the Fund for Financing Development Compacts according to agreed principles of burden-sharing;

(d) *Monitoring mechanisms* - A mechanism for monitoring the right to development would have to assess the implementation of the various rights, both individually and in a composite manner. The development compact is one proposed international mechanism (separate from the treaty bodies) to facilitate the implementation of the right to development, as well as the financing of specific measures.

II. NEPAD

15. The New Partnership for Africa's Development (NEPAD), launched in July 2001 at the Organization of African Unity (now the African Union (AU)) Summit in Lusaka, is described by its architects as "a vision and programme of action for the redevelopment of the African continent" as well as a "comprehensive integrated development plan that addresses key social, economic and political priorities in a coherent and balanced manner".[5] The initiative explicitly integrates economic growth (at 7 per cent a year) and the promotion of democracy, human rights and poverty eradication in overall social development by committing itself to achieving the agreed International Development Goals (IDGs) by 2015. The NEPAD programme of action is organized around three general themes. The first relates to establishing conditions for sustainable development including peace, security, democracy and improving political governance; economic and corporate governance; and strengthening of subregional and regional economic cooperation. The second relates to programme priorities covering the bridging of the infrastructure gap in energy, water and sanitation, transport and information and communication technology; human resource development through improving the reach of education and health services; agriculture and rural development; and environmental sustainability. The third relates to mobilization of resources. More importantly, it involves mechanisms by the countries concerned to monitor their own performance and to submit to the discipline of peer review and the scrutiny of the international financial institutions (IFI).

16. Under the institutional arrangement NEPAD will serve as a catalyst for the implementation of the programme of action by designated institutions. These entities are expected to "internalize the NEPAD spirit and programmes in their development strategies and investment plans".[6] At the national level, Governments will be primarily responsible for engaging and mobilizing civil society around the ideas and programme of NEPAD. At the subregional level, regional economic committees (RECs) will organize subregional stakeholders for planning, development and implementation. The AU performs this function at the continental level, designating special committees to drive the NEPAD process along. Additionally, the NEPAD Heads of State and Implementation Committee composed of 15 heads of State will be responsible for identifying strategic issues at the continental level, establishing mechanisms for reviewing progress in achieving targets and standards as well as progress in the implementation of past decisions.

17. The NEPAD main policy documents pledge that countries will work with the World Bank, the International Monetary Fund (IMF), the African Development Bank (ADB) and the United Nations agencies to "accelerate implementation and adoption of the Comprehensive Development Framework, the Poverty Reduction Strategy and related approaches".[7] The full implementation and expansion of the Heavily Indebted Poor Countries (HIPC) initiative is considered essential to achieve macroeconomic goals such as improving the investment environment. The NEPAD countries call for an expanded HIPC initiative that includes

provisions for middle-income countries engaged in the Paris Club debt relief process and a move towards 100 per cent debt cancellation. They assert that HIPC still leaves many of its participating countries with unsustainable debt levels and that countries not included in HIPC should also receive debt relief to free resources for poverty reduction. Thus, NEPAD does not seek to replace or compete with existing development initiatives.

NEPAD and the RTD-DC model

18. The NEPAD model is quite consistent with the RTD-DC model. Its development policy framework is very similar to the approach spelt out in the development compact. It is country driven, comprehensive, partnership and results oriented. However, in designing and implementing programmes, mechanisms have to be established to ensure that they follow the rights-based approach with equity, non-discrimination, participation, accountability and transparency, which have to be monitored effectively. They must also involve the civil society organizations (CSO). Two main concerns in this regard may be highlighted:

(a) *Participation* - The NEPAD progress report recognizes that the private sector and civil society have not, to date, been sufficiently mobilized in support of the process through deeper engagement. CSOs have complained that NEPAD was drawn up and debated without input and consultation from the groups that will be most affected by its policies. The concept of participation in the RTD-DC model goes beyond consultations. Beneficiaries have to be involved in the design, implementation and monitoring of the programmes. NEPAD must be prepared to work out the methods for ensuring that participation;

(b) *Market-oriented approach to be adjusted to human rights concerns, equity and justice* - In following a market-oriented approach to development policy that would improve the overall efficiency of their economies, the NEPAD authorities should be able to adjust it in accordance with the rights-based approach, especially as regards equity and justice. It must be able to - and must be seen by its peoples and the civil society as able to - modify and monitor the programmes suitably to avoid the mistakes of the earlier structural adjustment policies.

19. The RTD-DC model is founded on the belief that it is possible to build upon a market-oriented approach to development, an approach based on liberalization and deregulation of economic policy to encourage private initiatives and a right to development policy that not only promotes a high rate of economic growth with equity but realizes social development goals as human rights. Indeed, the NEPAD programmes carried out in this manner may become test cases for realizing the right to development from which even the international agencies, such as the World Bank and IMF, can learn.

20. *Peer review* - The most important operational similarity is the development of the "African Peer Review Mechanism (APRM)" which is designed to encourage the adoption of policies and practices that lead to political stability and sustainable development. The Peer Review process, which entails periodic reviews of the policies and practices of participating States to assess progress, can be likened to the development compact model's mechanism for ensuring the assessment of the "mutuality of the obligations" between the developing countries and the international community. The major difference is that APRM does not apply to external actors such as donors and IFIs who wield influence on the development process, whereas the

development compact is primarily concerned with holding both donor countries and developing countries accountable to each other. To rectify this, a method has to be worked out to extend APRM so as to incorporate the accountability of the international partners.

21. *Financing* - Similar to the RTD-DC proposed trust fund which calls for, illustratively, an increase of US$ 50 billion in ODA from OECD countries, NEPAD calls for an expansion of ODA: yearly investments of US$ 64 billion from developed countries are expected for the establishment of two separate trust funds, one to finance peacekeeping and conflict-prevention activities and another to support capacity-building and implementation of the programme. In creating such funding facilities, the RTD-DC model for financing the implementation of development compacts through "callable contributions" of international partners may be helpful, especially in determining the burden-sharing among the members of the international community.

22. *Democracy and good governance* - Unlike previous regional and continent-wide plans for African development, NEPAD places a strong emphasis on democracy and good governance, which is in keeping with the RTD-DC approach. The "Declaration on Democracy, Political, Economic and Corporate Governance" is a statement by NEPAD member States of their commitment to democracy and good governance and the promotion and protection of human rights. It calls for the development of vibrant CSOs, including strengthening human rights institutions at the national, subregional and regional levels, and pledges support for the African Charter, the African Commission and the African Court on Human and Peoples' Rights as important instruments for ensuring the promotion, protection and observance of human rights and securing responsible free expression, including freedom of the press. Each of these measures is explicitly articulated in the RTD-DC approach.

23. In the May 2002 review of NEPAD, the organization Rights and Democracy expressed the concerns of many CSOs and sympathizers when it stated that, "a human rights approach to development in Africa depends not only on prudent fiscal management, foreign investment and expanded market access, but also on the reorientation of development objectives towards meeting the human rights obligations of States within a transparent, accountable and non-discriminatory process".[8] It further stated that NEPAD does not concretely address the means by which a rights-based approach to development can be implemented and how Governments will be monitored and held accountable under the international treaties.

24. In sum, RTD-DC and NEPAD share the same basic premise: poverty eradication and sustainable development. However, unlike the RTD-DC approach, NEPAD does not yet explicitly state the centrality (or primacy) of human rights. Rather, human rights concerns (namely within the context of peace, security, democracy and political governance) are addressed as broadly defined actions. The principles and objectives of human rights are not sufficiently woven or integrated into the overall strategic plan of action. In the RTD approach all civil, political, economic, social and cultural rights are integrated into the rights-based economic growth as a vector of interdependent elements, not as separate or discrete objectives.

III. CDF/PRSP/CCA-UNDAF FRAMEWORKS

25. In 1999, the World Bank President proposed the Comprehensive Development Framework (CDF) to address the need to balance sound macroeconomic policy and growth with an equal concern for effective poverty reduction and improved institutional capacity for development. This was to encourage a transition of donor-led development assistance strategies to country-led strategies of development. CDF also involves a commitment to expanded partnership, transparency and accountability with the active involvement and leadership of Government. At the same time, the World Bank and IMF adopted nationally owned participatory poverty reduction strategies as a basis for their concessional lending. Building upon the principles of CDF, the poverty reduction strategy approach led to the development of the Poverty Reduction Strategy Papers (PRSPs). PRSP is a tripartite agreement between IMF, the World Bank and the participating Government and is envisaged as the primary forum for policy dialogue in all countries receiving concessional lending from these IFIs. A PRSP (or Interim (I-) PRSP) is now a condition for World Bank and IMF poverty reduction programmes including debt relief measures under HIPC. CCA and UNDAF were launched in 1997. The overall aim is to increase the impact of United Nations development efforts by fostering greater integration of United Nations agencies working at the country level with the development efforts of the host country. CCA is primarily a tool for gathering information from various sources including civil society. Government approval is not needed for CCA and, therefore, it has the latitude to comment on a range of issues including human rights and governance. UNDAF is a narrow United Nations-focused process intended to define appropriate responses to priorities identified in CCA.

A. Principles and policy objectives

26. PRSPs are guided by five core principles. They are (a) country driven, with broad-based participation by civil society and the private sector; (b) results oriented, focusing on outcomes that benefit the poor; (c) comprehensive, taking into account the many dimensions of poverty; (d) partnership oriented, with coordinated participation of bilateral, multilateral and non-governmental partners; and (e) have a long-term perspective for poverty reduction.

27. A long-term perspective is meant to incorporate macro, social, structural and institutional issues focused on sustainable development. For genuine country ownership, a Government must develop broad-based participatory approaches, building the institutional capacity and a policy framework around which an agenda for development can be shared by all major stakeholders.[9] Country ownership also requires decentralized decision-making and social impact assessments, effective coordination of external partners and holding consultative group meetings. A strategic partnership requires the engagement of Government at all levels with civil society, the private sector, donors, international agencies and other development actors. This should bring about donor actions aligned with the national strategy and the harmonization of procedures and practices among all development partners.

B. Comparison with the RTD-DC model

28. The PRSP, CDF and CCA-UNDAF models share with the right to development model similar theoretical concerns about effective poverty reduction strategies with country ownership and civil society participation. They would all accept the notion that development measures should be participatory, accountable, transparent, equitable and non-discriminatory. Each of the development frameworks is geared towards achieving a holistic approach to meeting basic needs, expanding capabilities and reforming institutions. While they address growth and sound macroeconomic policies to varying degrees, each seeks a better balance between economic growth, governance and social development. Both the PRSP and RTD models explicitly articulate an interest in growth of resources (GDP, technology and institutions), as a means of achieving poverty reduction for PRSP and the realization of basic rights for RTD-DC. Both would endorse the adoption of policies for macroeconomic stability to achieve sustainable growth, although in the RTD approach that growth has to be consistent with human rights norms, equity and social justice.

29. Cooperation of stakeholders (both at the domestic and international levels) is also a principle shared by all these development frameworks. RTD-DC relies on a model of international cooperation facilitated through a development compact. PRSPs are also supposed to be partnership oriented, involving bilateral, multilateral and non-governmental actors in both their development and implementation.

30. Each framework also views country ownership as critical to sustainable and effective practices. While RTD-DC encourages development plans fully drawn up by a developing country seeking a development compact, PRSP is intended to be home grown and tailored to the specific needs, circumstances and goals of the participating country. Each framework expresses a commitment to building the capacity of countries to develop, implement and manage their poverty reduction strategies and national plans through technical assistance and institution-building.

31. Also, each framework is concerned with identifying indicators and measures of progress and sets specific target periods and goals while also taking into account the reality of progressive realization of their objectives as well as the difficulty of meeting all the objectives simultaneously.

32. The basic difference between RTD and the other development frameworks is the centrality of human rights: all the objectives of policy and the various indices of social development or economic growth have to be seen as human rights and have to be achieved in a manner that respects human rights norms. The development process to which everyone is entitled as a human right would entail obligations on States and the international community that have to be fulfilled with accountable monitoring and enforceable remedies.

C. Analysis of the rights-based norms in the different frameworks

33. PRSP, CDF and CCA-UNDAF have encountered many challenges to their implementation. Some stem from the particular circumstances of a country (e.g. conflict-affected countries); other challenges or constraints are inherent in the structure and process enjoined by the development framework, their design and policy formulations, restrictive time lines and bureaucratic practices. Most of these challenges can be effectively addressed in the RTD-DC proposal, with explicit rights-based measures and reciprocal obligations for all duty-holders.

34. Of all the frameworks, PRSP has been the most discussed, garnering public scrutiny, criticism and civil society debate about both the process and the outcomes. For this reason, it is useful to highlight the most common concerns related to PRSP - some of which are also shared by CCA-UNDAF - in light of the principles that will contrast it with RTD-DC, namely, how far it conforms to the human rights norms of participation, accountability, transparency, equity and non-discrimination.

1. Participation

35. The participation process of PRSP has been the most problematic. Critics have questioned the extent to which the process is inclusive, accessible, informative and transparent with regard to policies and practices of the Government. The 2002 reports by the staffs of the World Bank and IMF noted that donors had expressed concerns about the lack of involvement of specific groups in the participatory process.[10] Among those not fully involved in the PRSP process are CSOs (especially those out of favour with Government), local government officials, private sector representatives, trade unions, women's groups and direct representatives of the poor.

36. In a 2001 report by World Vision, case studies demonstrated an inherent tension between the pressure to produce PRSPs that are repackaged versions of existing plans and the emphasis on a participatory process. A frequent complaint of CSOs is that Governments call them together for meetings intended to provide endorsement of an already formulated plan. Discussions are often limited to a narrow set of issues about poverty reduction programmes and exclude debate about structural reforms and macroeconomic policies. Some donors are also concerned about lack of clarity about their role frustrated at the failure to involve them in the preparation of I-PRSPs and in dialogues between the Government and the Bank-Fund during missions. Some donors stated that the prominent role of the Bank-Fund Joint Staff Assessments (JSA) has drawn attention away from the assessment of other actors and that the PRSP process is dominated by the Bank and the Fund.

37. A report by Christian Aid[11] (2001) found that poor people were typically excluded from dialogues that are planned around broad macroeconomic reforms. NGOs consistently reported two parallel processes - one in which "social issues" are discussed and another process in which "macro issues" are discussed. CSOs are given little space in which to discuss the package of adjustment policies that still dominate national PRSP and the Poverty Reduction and Growth Facility (PRGF). In some cases, it is alleged, IMF representatives stated that recommendations drawn from CSO dialogues would only apply to the allocation of HIPC debt funds and not

macroeconomic targets and policies. This serves as a barrier to genuine national ownership of development plans. Also, grass-roots community groups such as rural organizations and local civil society groups and women have also been excluded from involvement in PRSP. PRSP documents have been largely silent on specific efforts to address gender inequity.

2. Accountability

38. The centrality of accountability in poverty reduction and development strategies is acknowledged in PRSP, CDF and CCA-UNDAF. The key issues regarding accountability in these frameworks are accessibility of transparent and effective mechanisms to poor people and their organizations in relation to different duty-holders, allowing for appropriate adjudication of their complaints and enforceable remedies. The 2001 report of CDF in 46 countries found that progress on accountability was very slow. Fewer than half of the countries had adequate information systems for development coordination and only a quarter had established systems to track development results.

39. Reviews of the progress of PRSPs (2002) raised concern about the potential tension between the principle of country ownership and the need for donors to be accountable for the effective use of their resources. An issue paper warns of "divergence in views about the right policies and about capacities for implementation" because the donor must negotiate its desire to respect country ownership while supporting policies and programmes that contribute to results consistent with the donor's mandate. Governments have often complained about the tendency of donors to seek inclusion of their agendas or priority areas as well as a range of disparate issues (e.g. AIDS, governance, rural development, corruption).

40. Accountability should in principle include measures to remedy the lapses on the part of those who are accountable. These frameworks, however, have not always matched conditionalities or corrective measures with specific obligations for the country or for actors in the donor community. Most countries that have undertaken PRSPs are seriously short of resources. They also lack the capacity to carry out broad-based participation processes, which are critical to the success of the PRSPs. Many countries have not received the appropriate levels of financial and technical support from IFIs and the OECD countries, either for carrying out an effective participatory process or for fully implementing the programmes. Insufficient funding of HIPC, to which PRSPs are linked, has also greatly increased the problem. There is a case for further and deeper debt relief and greater levels of budget support - including expanding the proportion of bilateral aid devoted to budget support rather than project-based assistance. Without a firm commitment from the donor community and appropriate enforcement mechanism, there is no guarantee that any of these programmes can be carried out.

41. Appropriate mechanisms of accountability and enforcement are lacking among duty-holders - at both the country level and in relation to the obligations of the international community. Accountability at the country level is hampered also by limitations of country ownership and weak monitoring practices. At the international level, even if IFIs have not provided countries with the appropriate levels of financial and technical support needed to implement the programmes, there is hardly any formal forum for remedying that situation.

3. Transparency

42. Transparency and accountability are closely linked. A certain level of transparency in all transactions is assumed in accountability, and is necessary for an effective participation process. Transparency in the design and implementation of programmes is essential for carrying out a development programme. An appropriate adjudicating and monitoring mechanism to ensure accountability also needs to be based on transparency. The 2001 report on the progress of CDF implementation in low- and middle-income countries stated that very few countries had published or had plans to publish information about the progress of the programmes. Overall, both Governments and external partners remain cautious about a free exchange of information. Also, while consultations raised the level of demands for transparency, only a few countries made development information accessible in a transparent manner to all stakeholders.

43. There is also criticism of the level of transparency of donors, in particular IFIs such as the World Bank and IMF. In examining PRSP, the Christian Aid report states that "Despite their concern with 'good governance' at a national level, and their international influence over billions of people's lives, the IFIs' own institutional structures and cultures are scandalously undemocratic." This is reflected in their voting structure (G7 countries hold 57 per cent of votes) and their lack of transparency (their most important documents remain confidential and closed to public scrutiny).

4. Equity

44. Equity and non-discrimination are commonly linked and are considered the most fundamental elements of international human rights law. Inequality and discrimination take on many forms such as legal inequalities in status and entitlements as well as policies that ignore particular sections of people. While human rights instruments tend to discuss equality in law and equality in rights, the RTD approach seeks to address the need for equality in the level or amount of benefits accruing from the exercise of the rights. As a result, policies and measures must be based on a development framework that reduces income disparities or does not allow these disparities to increase.

45. In a rights approach the concerns about equity and social justice must inform the development policies, especially the macroeconomic policies and programmes for structural adjustment. The macroeconomic policies of PRSPs persist with their old pattern of policy prescriptions (such as cost recovery, privatization and trade liberalization). They may be helpful in promoting efficiency and preparing the ground for increased private sector involvement for higher growth. But such policies must not compromise the ability of a country to meet the basic needs and rights of its people. In many cases, the basic ingredients of PRSP macroeconomic packages appear to be traditional adjustment policies with little substantive innovation. The Bank-Fund reviews noted that certain countries (especially in Latin America) stressed that more attention needs to be spent on finding ways to encourage private investment and private sector growth other than removing barriers and restrictions and promoting privatization.

46. The independent expert of the Commission on Human Rights on structural adjustment contends: "What the architects of the HIPC initiative failed to realize is that it was the failure of two decades of structural adjustment programmes (SAPs) to help countries 'export their way out

of the crisis', and their inability to service their debts and the social erosion that followed that gave the impetus for the establishment of the HIPC initiative. Increasing malnutrition, falling school enrolments and rising unemployment have been attributed to the policies of structural adjustment. Yet these same institutions continue to prescribe the same medicine as a condition for debt relief, dismissing the overwhelming evidence that SAPs have increased poverty."[12]

47. The country experiences with PRSP show that even for those countries for which there was some decline in the number of people living below the poverty line, income inequalities have actually increased. There has also been very little decrease in other indices of deprivation in those counties. The results highlight the challenges of balancing economic growth with equity. While each of the countries experienced some levels of growth or some gains in the social sectors, the level of disparities persisted or worsened. There is thus a "mixed bag" of results rather than progress consistent with the RTD notion of development. Development measures should seek to reduce disparities, or at the very least prevent them from increasing.

5. Non-discrimination

48. The issue of non-discrimination, like the concerns about human rights in general have not been given serious consideration in PRSPs. The Bank-Fund staff assessments, official reviews and CSO reports found that many PRSPs failed concretely to address the status of women and other marginalized vulnerable groups or of indigenous people. PRSPs also failed to stress sufficiently the need for national-level action for child safety such as safety nets to protect children, particularly during rapid economic transition and/or rising income inequality.

49. The most obvious gap is the failure to draw concrete links between the development frameworks and human rights standards. In particular, the notion that the objectives of development are to be treated as entitlements or rights that are legitimately claimed by individuals holds limited currency among donors such as IMF and World Bank. While rights-based language is cautiously referred to in some official documents, the human rights approach to development is not treated as a core principle. A United Nations report (2001) on a human rights assessment of PRSP found that none of the I-PRSPs attempted to integrate major international human rights principles such as the International Covenant on Economic, Social and Cultural Rights or International Labour Organization (ILO) conventions. There is also an absence of the language and intent of human rights in the discussion of governance and judicial and legal reform, all pointing to the reality that States are not expected to fulfil their obligations to address matters of human rights in their domestic legal systems.[13]

D. Financing of rights-based development

50. Even if all the modifications that have been suggested to make the PRSP (and CDF) frameworks conform to the standards of the rights-based development (as outlined in the RTD-DC model) are made the available funds will not be sufficient to meet the requirements for implementing the right to development on a global scale or for meeting even the financial needs for NEPAD. In addition to supplementing policy measures to attract commercial flows and private investments, substantial efforts have to be made to mobilize resources from the donor community. The RTD-DC framework may serve as a very useful model in this context. It involves the creation of a fund for financing development compacts on the basis of "callable

contributions" - commitments made by the donors on a notional basis - whose disbursements can be decided on a case-by-case assessment by a support group. Such a fund could be a systematic and coordinated way of raising resources for development to supplement the Bank-Fund financing of PRSPs, as well as HIPC initiatives. A modified rights-based PRSP should in principle not conflict with the Bank-Fund approach, or the intent of the executive boards of those organizations, if that is seen as catalysing additional finance from the donor community. NEPAD, for example, clearly believes that its programmes can be built on PRSPs, and so can other programmes as well.

51. In his fourth report the independent expert provided an illustrative model of burden-sharing of ODA. A modified version of that exercise, based on 2000 data of OECD, is provided in the annexed table. This exercise is based on three assumptions: (a) DAC member countries are genuinely interested in helping countries to implement a rights-based development programme; (b) even if the ODA/GNP ratio for a country is far below the 0.7 per cent target, it may at least try to maintain its best performance of the last three years as its disbursement in the coming years; and (c) it will be prepared to make additional commitments in the form of "callable contributions" to a fund for financing the right to development, maintained by DAC or any other agency. These funds can be used only by countries that are implementing rights-based programmes of development, such as NEPAD or other country plans. Support groups that would be established for such countries would monitor their performance and recommend the use of this fund. The "callable contributions" of the members would then be invoked according to some agreed principle of burden-sharing.

52. The exercise shows that while total ODA from DAC in 2000 was only about $54 billion, if each country had followed its peak contribution of the previous three years in 2000, the total ODA would have been roughly $59 billion. But if they had followed the 0.7 per cent of GNP target, the total would have been more than $169 billion. It would therefore have been possible to raise $110 billion for the proposed fund if the 0.7 per cent target were universally accepted. The size would be reduced if the proposed target were lowered, but there still would be a large scope for raising funds, especially as the actual disbursement, based on invoking the "callable" capital, would be much less, depending on the successful implementation of the rights-based programme. This can easily meet the NEPAD requirements. It could also meet the requirements of several other countries, supplementing PRSP and other international programmes.

53. In sum, the RTD-DC model can accommodate all the existing mechanisms and frameworks for development cooperation. There are, however, two fundamental and indispensable requirements for integrating all such efforts. First, the realization of human rights and fundamental freedoms as spelt out in the RTD-DC model must be the central aim of all efforts. Second, there must be an independent rights-based mechanism to monitor the performances of all the countries, the obligations of the developing countries to implement the programmes for the right to development and the obligations of the international community to cooperate with the developing countries effectively and in full measure.

Notes

[1] The author gratefully acknowledges the work done by his research assistant, Diana Aubourg at the FXB Center for Health and Human Rights, Harvard School of Public Health, which was extremely helpful in preparing this report.

[2] First report: E/CN.4/1999/WG.18/2; second report: A/55/306; third report: E/CN.4/2001/WG.18/2; fourth report: E/CN.4/2002/WG.18/2.

[3] The logic of this process can be described as follows: the state of well-being of a country or the level of the rights-based development (R_D) can be defined as : $R_D = (R_1, R_2 \ldots R_n)$, or a vector of the level of realization of the "n" different rights recognized as human rights in the international instruments. Each R_i is an index of the realization of the i^{th} right, which depends upon the availability or supply of the i^{th} good or service corresponding to that right and the access or the manner in which individuals can enjoy that good and service. Both the availability of and the access to these goods depend on resources or GDP, determining their supply and public policy, using these resources. R_i,'s, which are interdependent, can be described as $R_i = f$ (R_j, GDP, policy), $j = 1,2 \ldots n$; $i \neq j$

The right to development is an improvement of this level of well-being over a span of time and can be described as a vector $dR_D = (dR_1, dR_2 \ldots\ldots dR_n, g^*)$, where g^* denotes a rights-based growth of GDP or a growth with equity, participation and other norms of human rights. The policies that determine the access to and availability of the goods and services corresponding to these rights and the expansion of GDP in a rights-based manner are the obligations that the duty-holders must carry out to fulfil these rights.

The condition for the improvement of the right to development $dR_D>0$ is specified in terms of the improvement of the vector, such that there is at least one i for which $dR_i>0$ and no other right is negative, or $dR_j \geq 0$, meaning that the realization of some or at least one right must have improved and no right - civil, political, economic, social or cultural - is violated.

[4] In his fourth report (para. 16), the independent expert, compared the right to development as the right to a process of development to what Amartya Sen described as a "metaright". (See Amartya Sen: "The right not to be hungry", in Alston and Tomasevski (eds.), *The Right to Food*, SIM, Netherlands, 1984.) A metaright to something x can be defined as the right to have policies p (x), that genuinely pursue the objective of making the right to x realizable. Even if the right to x remains unfulfilled or immediately unrealizable, the metaright to x, p (x) can be a fully valid right if all the obligations associated with p (x) can be clearly specified. The outcomes of the process of development are human rights while the process of development that leads to these outcomes are also human rights. But the process of development entails a programme of policies and phased realization of the target rights executed over time, maintaining consistency and sustainability, with a high probability of leading to the realization of the final outcomes. Therefore, the right to the process of development can be regarded as a metaright.

It has, however, been pointed out to the independent expert that in the context of human rights law, policies are related to "obligations" and since "rights" and "obligations" are two sides of the same coin, having a "right" would imply that the duty-holders had the "obligation" to

adopt policies that would lead to the realization of that right. So if people can claim a right, they can also demand that the State and other duty-holders carry out their obligations. There can, however, still be an advantage in claiming the discharge of those obligations as metarights if the corresponding policies can be precisely defined in terms of responsibilities, therefore become realizable while the corresponding rights may remain abstract or "background" rights.

It is probably much better to describe the right to development as the right to a process of development, as a "basic right" in the sense in which Henry Shue used this term (See Henry Shue, *Basic Rights,* Princeton, 1980). A basic right is one the enjoyment of which is essential to the enjoyment of all other rights. A basic right is not necessarily superior or preferable to other rights. But if the point is that people should be able to "enjoy" or "exercise" other rights, "the basic rights need to be established securely before other rights can be secured". Further, "when a right is genuinely basic, any attempt to enjoy any other right by sacrificing the basic right would be quite literally self-defeating cutting the ground from beneath itself" (Shue, pp.19-20). The right to a process of development can in that sense effectively be described as basic relative to all the other rights, civil, political, economic, social and cultural. Without the realization of the basic right, none of the other rights can be enjoyed effectively and in a sustained manner.

[5] NEPAD in brief, at www.nepad.org.

[6] NEPAD - Progress report and initial action plan at www.nepad.org, para. 63.

[7] NEPAD, Policy document at www.nepad.org, para. 119.

[8] Rights and Democracy, "Human Rights and Democratic Development in Africa - Policy Considerations for Africa's Development in the New Millennium", prepared in preparation for the G8 Summit, 21 May 2002.

[9] It should be noted here that CSOs have often criticized the extent of this process, complaining that civil society was largely excluded from the macroeconomic planning.

[10] World Bank and IMF, "Review of the PRSP Approach: Main Findings - March 15, 2002", prepared by staffs of the World Bank and IMF.

[11] Christian Aid policy briefing, Ignoring the Experts: Poor People's Exclusion from Poverty Reduction Strategies, October 2001, at www.christian-aid.org.uk.

[12] "The Highly Indebted Poor Countries (HIPC) Initiative: a human rights assessment of the Poverty Reduction Strategy Papers (PRSP)", report submitted by Mr. Fantu Cheru, independent expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights (E/CN.4/2001/56), 18 January 2001, para. 27.

[13] Ibid., para. 23.

Annex

ODA from the DAC member countries in 2000

DAC member countries	ODA % GNI (GNP)	ODA (US$ million)	ODA if 0.7% of GNI (GNP)	Peak of ODA contribution in the last 3 years	If ODA contribution in 2000 was at the peak level (US$ million)	Difference between 0.7 % and the peak (US$ million)
Australia	0.27	987	2 558.89	0.27	987.00	1 571.89
Austria	0.23	423	1 287.39	0.26	478.17	809.22
Belgium	0.36	820	1 594.44	0.36	820.00	774.44
Canada	0.25	1 744	4 883.20	0.30	2 092.80	2 790.40
Denmark	**1.06**	**1 664**	**1 664.00**	**1.06**	**1 664.00**	**0.00**
Finland	0.31	371	837.74	0.33	394.94	442.81
France	0.32	4 105	8 979.69	0.40	5 131.25	3 848.44
Germany	0.27	5 030	13 040.74	0.27	5 030.00	8 010.74
Greece	0.20	226	791.00	0.20	226.00	565.00
Ireland	0.30	235	548.33	0.31	242.83	305.50
Italy	0.13	1 376	7 409.23	0.20	2 116.92	5 292.31
Japan	0.28	13 508	33 770.00	0.34	16 402.57	17 367.43
Luxembourg	**0.71**	**127**	**127.00**	**0.71**	**127.00**	**0.00**
Netherlands	**0.84**	**3 135**	**3 135.00**	**0.84**	**3 135.00**	**0.00**
New Zealand	0.25	113	316.40	0.27	122.04	194.36
Norway	**0.80**	**1 264**	**1 264.00**	**0.91**	**1 437.80**	**-173.80**
Portugal	0.26	271	729.62	0.26	271.00	458.62
Spain	0.22	1 195	3 802.27	0.24	1 303.64	2 498.64
Sweden	**0.80**	**1 799**	**1 799.00**	**0.8**	**1 799.00**	**0.00**
Switzerland	0.34	890	1 832.35	0.35	916.18	916.18
United Kingdom	0.32	4 501	9 845.94	0.32	4 501.00	5 344.94
United States	0.10	9 955	69 685.00	0.10	9 955.00	59 730.00
Total	0.22	53 739	169 901.24		59 154.14	110 747.10

Source: OECD, *Development Cooperation Annual Report* 2001, at www.oecd.org and *fourth report of the independent expert on the Right to Development*, (E/CN.4/2002/WG.18/2).

Notes: (1) DAC members have progressively introduced the new System of National Accounts (SNA), which replaced GNP with gross national income (GNI). The coverage of national income has been expanding through the inclusion of new areas of economic activity and the improvement of collection methods. The new System of National Accounts co-sponsored by OECD and other major international organizations broadens the coverage of GNP. As GNI has generally been higher than GNP, ODA/GNI ratios are slightly lower than the previously reported ODA/GNP ratios.

(2) The countries given in bold represent those countries whose ODA contribution exceeds 0.7 per cent of GNI (GNP). In calculating what the ODA amount would have been for these countries if it were 0.7 per cent of GNI (GNP), the peak ratio is applied.

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